

MINUTES  
UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD MEETING

February 12, 2004

Board Members Present: Judy Lever, Chair; Craig Anderson, Vice Chair; Cullen Battle; Carlton Christensen; David Cunningham; Bill Doucette; John Newman; Lowell Peterson; Scott Widmer

Staff Members Present: Dennis R. Downs, Executive Secretary; Brad Johnson (UST) Executive Secretary; Scott Anderson; Raymond Wixom; Rusty Lundberg; George Lukes; Carl Wadsworth; Cheryl Prawl; Marty Gray; Don Verbica; Otis Willoughby

Others Present: Bernie Allen; Ivan Djambov; Brent Warren; Scott Warren; Kris Snow; Sean McAndless; Tim Orton; Dan Shrum; Scott Bruce; Richard Rathbun; Clint Warby; Gorden Raymond; Craig Galli; Wayne Christensen; Susan White

I. The meeting was called to order at 1:14 p.m.

Mr. Downs informed the Board that the Governor has appointed Scott Bruce to fill the vacancy left by Mr. Probert. (This appointment still needs to be ratified by the State Senate, however, it is anticipated that Mr. Bruce will be confirmed and in attendance at the next Board meeting.)

Also, Mr. Alkema has resigned from the Board, as he has accepted employment out-of-state. Mr. Downs stated that Mr. Alkema requested him to convey his appreciation to the Board. Mr. Downs stated that he will begin seeking a replacement for Mr. Alkema. The replacement will be an individual who represents the commercial solid waste industry. If anyone has any suggestions of a possible candidate, please contact Mr. Downs with the information.

II. It was motioned by John Newman and seconded by Craig Anderson and unanimously carried that the January 8, 2004 Board Meeting minutes be approved.

III. Underground Storage Tank Update - Brad Johnson

Mr. Johnson stated that UST STATSTICAL SUMMARY provided in the packet will be utilized to inform the Board of information relating to the tank program. The information is broken out into three categories: Program, Financial, and Enforcement. The information provided also includes historical trends. (Mr. Johnson stated that included in the figures are approximately 16 Indian land tanks that are on the PST Fund. Even though they are owned by Indian land, the State of Utah has jurisdiction over these facilities.) Also, tanks that do not have a current Certificate of Compliance are not allowed to receive fuel. Fuel distributors are fined if delivering fuel to facilities without a Certificate of Compliance. If the Board would like additional information on the monthly summary handouts that will be provided in their packet, please contact Mr. Johnson.

IV. Commercial/Federal Facilities

Site-specific treatment variance request from Envirocare of Utah, Inc.  
(Information Item Only) – Don Verbica & Otis Willoughby

**Cullen Battle declared a conflict of interest and informed the Board that he would not participate in any discussion or voting that might take place concerning this matter.**

Tim Orton, Envirocare of Utah, Inc. stated that in a letter dated January 22, 2004, Envirocare of Utah, Inc. requested a site-specific treatment variance for P015, Beryllium Dust. The mixed waste facility proposes to receive a waste stream from a generator that carries the listed waste code for beryllium dust (P015). The waste consists of less than five cubic feet of spent product material from machining operations. The technology based treatment code for this material is either RMETL or RTHRM. Both of these treatment codes are designed to recover the beryllium metal from the waste, but because this waste also contains radioactive isotopes, it would be unsafe to recover the beryllium and an alternative treatment process is required.

The treatment variance request, if approved, would allow Envirocare to pretreat the beryllium dust with a cement grout. The grout and waste will form a solid monolith that will then be encapsulated in a polyethylene coating to retard leachability. All other contaminants associated with this waste stream are below Land Disposal Restrictions and meet disposal requirements at the Facility. Envirocare also requests approval to dispose of the macroencapsulated waste in Envirocare's Mixed Waste Landfill Cell in accordance with applicable requirements of Envirocare's State-issued Part B Permit. (This is the first time that Envirocare has handled this type of waste and it is not anticipated that this type of waste stream will be encountered again.)

Ms. Lever expressed thanks to Mr. Orton for his presentation explaining the rationale for the variance request.

The 30-day public comment period on this variance request began on February 3, 2004 and will end on March 3, 2004. It is anticipated that this matter will come before the Board for action at the March 11, 2004, Board meeting.

#### V. Presentation on Variances by Attorney General's Office – Raymond Wixom

Mr. Wixom, Assistant Attorney General, stated the variance element of the Solid and Hazardous Waste Program is based on Section 19-6-111 of the Solid and Hazardous Waste Act. (A memorandum addressing variances provided in the Board's packet was discussed.) A variance is a permission that a governmental authority grants to allow a regulated entity to deviate from standard requirements in a specific circumstance. The Board has authority to grant variances from any requirement of the Utah Solid and Hazardous Waste Act (USHWA) if it determines that the requirement imposes an undue or unreasonable hardship on any person. The Legislature chose to give the Board considerable discretion in granting or denying requests for variance from the USHWA and the Solid and Hazardous Waste Management Rules.

Eight various specific hazardous waste variances were briefly discussed according to specific regulations: (1) R315-2-18, Variances from Classification as a Solid Waste, incorporates 40 CFR 260.30 by reference. The federal provision and the rules to which it refers set out the standards and procedures the Board is to use in determining whether certain recycled materials are solid wastes; (2) R315-2-20, Variance to be Classified as a Boiler; (3) R315-8-8, Financial Requirements; (4) R315-8-10 Tanks (Secondary containment requirements; (5) R315-7-15 Financial Requirements; (6) R315-7-17 Tanks (Containment and detection of releases; (7) R315-9-2, Emergency Control Variance; (8) R315-13-1, Land Disposal Restrictions, incorporates 40 CFR 268.44 (h) - (o) by reference. The adopted federal provisions authorize a generator or treater of hazardous waste to petition the Board for a site-specific variance from land disposal treatment standards in specific circumstances. 40 CFR 268.44 (h)-(o) sets out the criteria by which the Board is to evaluate requests for site-specific variance from land disposal treatment standards. Before granting or denying a variance request, the Board provides public notice and a reasonable opportunity for public comment.

### Solid Waste Variances

R315-317-2, Variances, sets out standards and procedures under which the Board will consider requests for variance from the Solid Waste Permitting and Management Rules, R315-301 through 320. This rule also includes the limitation that the Board will grant variances only to the extent allowed under federal law.

Mr. Wixom stated that Division Staff will continue to work on improving the information submitted on the Executive Summary for the Board to review. Information, such as, is a particular request a good idea, and/or include the standards that need to be applied, i.e., site specific regulations, etc. may need to be included in the information provided to the Board.

Mr. Cullen Battle stated that Board should indicate in its basis for granting a variance not only the undue or unreasonable hardship, but also ensure protection of human health and the environment is addressed. (Protection of human health and the environment is not in the rules for Hazardous Waste, but is included in the rules addressing non-hazardous waste.) Mr. Craig Anderson stated there needs to be a clear articulation of the basis for reaching a determination on each variance. Judy Lever stated that possibly an analysis be done before variances are brought forward.

Mr. Wixom restated that the Board should generally leave itself the broad discretion over variance requests that the Legislature has granted it. As the Board determines in specific cases whether a requirement imposes an undue or unreasonable hardship, it will probably consider the request and proposed alternative standards in relationship to the purpose and intent of the statutes the Board administers, including the need to protect human health and the environment. The Board has clarified in both the hazardous waste rules and the solid waste rules that it will not grant a variance in violation of federal law. Absent a specific need, it is not necessary or desirable for the Board to further define by rule how it will make case-by case determinations of variance requests. Mr. Wixom further stated that at this point he does not have any recommendation for rule changes regarding variances. The Board has raised some concerns, and if the Board feels it needs to give itself more guidance in this area they may request more information.

Mr. Downs stated that before anyone comes to the Board to make a request for a variance, Division staff has discussed with the applicant the requirements for approval or disapproval of a request. Division staff reviews applicable statutes and rules and also includes the need to protect human health and the environment. Based on all the information provided to Division Staff the Board should also consider the Executive Secretary's recommendations.

Mr. Wixom stated that if the Board would like to have the question of "protection of human health and the environment" addressed, then that information could be incorporated into the Executive Summary. At this time the Division feels that they are addressing this issue, as any variance granted is consistent with Federal Law.

Mr. Battle stated that he feels that Division Staff are currently doing what they need to be doing in handling variances, but is the Board doing what they need to in terms of "protection of human health and the environment", when it is not written into the rules/standards? Should a checklist be in place for the Board? The question of why doesn't the Board adopt the same standards/rules for Hazardous Waste as those for non-hazardous waste was briefly addressed?

It was recommended that a subcommittee be formed to further address this issue. The individuals appointed to the subcommittee are Cullen Battle, Raymond Wixom, Judy Lever, Craig Anderson, and Dennis Downs. It was also requested that this subcommittee review the issue of what is the disadvantage of putting language in the rules, i.e., possible rulemaking changes. (It was

determined that a public notice announcing the subcommittee meeting were not required, as all recommendations will be brought back to the Board for further discussion.)

VI. Petition for Rulemaking (Solid Waste Landfill Siting)  
(Potential Board Action Item) – Rick Rathbun

Rick Rathbun, Assistant Attorney General, stated that this is a rulemaking petition. Rulemaking is a function of the Board, but in this case, a party represented by Mr. Galli, has filed a petition for rulemaking. This is not a formal proceeding under the Administrative Procedures Act, this is a rulemaking issue. Rulemaking is a separate statute, Section 63-46a-12 of the Utah Code. The Board is requested that within 30 days after submission of the petition to deny or initiate rulemaking proceedings. (The information provided has not been thoroughly reviewed, as most Board members only received this information within the last few days. Based on that, the 30-day timeframe will be March 11, 2004 for the Board to make a decision.) If the Board denies the petition, they would basically be stating that they would not initiate rulemaking. (The consequences of that decision would be that the parties requesting the petition for rulemaking would have to seek other options, including a judicial challenge to the administrative rules.) On the other hand, if the Board does approve rulemaking today, the Board would direct the Executive Secretary to initiate rulemaking under the Rulemaking Act, which basically states that the proposed rule is published and an analysis of the rule is published that sets forth the reasons why the rule is requested, etc. Which will also include a public comment period. If the Board agrees to this petition, the Board would not be stating that the rules need to be changed instead the Board would be starting the procedures for rulemaking. (This petition addresses the rules that deal with solid waste disposal facilities.)

Board members clarified that if the petition is granted, that does not necessary determine what the ultimate rule will be, i.e. if rule changes will actually be implemented, etc. Mr. Rathbun clarified that this petition does not ask the Board to judge the merits of the request, but instead asks the Board to start the rulemaking procedure.

Lowell Peterson stated that he has a concern as he is associated with individuals mentioned in the Petition for Rulemaking, i.e., should he recuse himself. Mr. Rathbun stated that this concern could be addressed with him at a later time.

Mr. Newman stated that because he has not read all of the information provided, he would not feel comfortable making any recommendations at this time. Therefore, a motion to table the issue at this time is appropriate.

Mr. Rathbun clarified that based on when the Board members received the information, a decision needs to be made by March 11, 2004, to either deny or start the procedures for the rulemaking proceedings.

**\*\*It was motioned by John Newman and seconded by Carlton Christensen to table this issue until the next Board Meeting on March 11, 2004. (Mr. Lowell Peterson recused himself from the vote.)**

Mr. Galli, Attorney for Petitioners, stated what the Board is deciding today is not whether to go forward with rulemaking. What the Board is doing today, is agreeing to allow the staff to post a notice in the State Bulletin, which allows the public to submit comments. (The actual rule change is only one sentence, and deals with adding siting criteria to certain types of landfills to make it consistent with siting criteria used for other landfills.) If the Board would agree to allow the State to put it on the bulletin which initiates a public comment period, that would allow the public to submit comments on the merits of the rulemaking and then when it is brought back to the Board the Board would have public comments and have a recommendation or at least an analysis

including response to comments by the DSHW Staff. Thereby the Board would be better informed. Right now, the Board's only decision is to whether allow a notice to be placed in the State Bulletin. That does not commit the Board in any way to approve the recommended rulemaking changes.

Bernie Allen, Attorney for Warren Construction, stated that the decision to deny or approve the initiation of the rulemaking process is an important decision. Information regarding this issue was only received a few days ago, and therefore, the Board's decision to table this issue is appropriate.

#### VII. Chemical Demilitarization - TOCDF Update – Marty Gray

TOCDF is currently processing VX agent, and approximately 20% destruction of the VX stockpile is now complete. The trial burn for the liquid incinerator was completed at the end of January and that incinerator is operating at ½ rate at this point. Deactivation furnace, trial burn has been completed. The only one to remain is the metal parts furnace, and that is scheduled for the end of March. As trial burn data is received from the liquid incinerator trial burn, they discovered one drum where they exceeded their mercury emissions. As soon as they discovered the problem, and through sampling requirements it was discovered that the mercury was in the spent decon. The actual source is unknown. What will be done in the interim is TOCDF will sample every tank of spent decon and analyze it prior to feeding it into the liquid incinerator, to ensure they do not exceed their emissions.

#### VIII. Other Business - Legislative Update – Dennis Downs

Dianne Nielson was unable to attend the meeting due to an appropriation subcommittee meeting scheduled at the same time.

HB 13 - This bill modifies provisions relating to hazardous waste and treated hazardous waste disposal fees and a tax on hazardous waste facilities and non-hazardous solid waste facilities. (This bill has passed the House of Representatives and is now in the Senate.)

SCR1 - Concurrent Resolution Approving Solid Waste Permit. This concurrent resolution of the Legislature and the Governor gives approval for the operation of the Solitude Landfill to receive specified non-hazardous solid waste. (The bill has passed the Senate and now it is in the House of Representatives.)

SCR2 - This concurrent resolution of the Legislature and the Governor gives approval for the construction and operation of a Class VI commercial landfill (Peck Rock Products) to receive construction and demolition waste. (This permit is currently out for public comment.)

HB 254 - This bill requires that the Solid and Hazardous Waste Control Board within the Department of Environmental Quality adopt rules that prohibit construction and demolition waste facilities within 1/4 mile of incompatible structures unless allowed by local zoning. (This bill is on the 3rd reading calendar in the House of Representatives.)

HB 338 – Bottle Bill Amendments. This bill requires a deposit on the purchase of certain beverage containers, provides for a refund of the container deposit, provides for labeling requirements for deposit containers, and authorizes redemption centers.

Senate Bill 180 – Brownfields Property Amendments. This bill limits under specified circumstances the cleanup liability to the state of innocent landowners, bona fide purchasers of contaminated property, and landowners whose property is contiguous to contaminated property, but allows the state to hold a lien on the property for the property's increase in value due to the cleanup. (This bill has passed the Senate Committee.)

#### HB 123 - Drug Lab Cleanup and Disclosure Bill – Brad Johnson

This bill provides procedures for local health departments regarding property contaminated by illegal drug operations. This bill requires law enforcement agencies to report contaminated property locations to the local health department; requires the local health departments to make

these reports available to the public, as advisory information only; requires the local health department to notify the property owner of the report, and also to notify the county or municipality if the property owner is not taking action regarding the contamination; directs the state Department of Health to make rules that include certification standards regarding the decontamination of contaminated property; requires the Department of Environmental Quality to establish a certification program for decontamination specialists; requires clean-up of contamination and certification that a contaminated property has been cleaned up; establishes a program to certify specialists who provide evaluation, sampling, and clean-up of contaminated properties; and includes in the real estate definition of stigmatized property that is not subject to disclosure contaminated property that has been decontaminated.

- IX. The next Board meeting will be held March 11, 2004 at 1:00 p.m., in the DEQ Bldg. #2, Conference Room #101.

The June Board Meeting was tentatively scheduled for June 10, 2004, to be held in either Price or Green River, Utah. The Board will be touring the ECDC and the Solitude Landfill Site after the Board Meeting.

- X. The meeting adjourned at 3:18 p.m.